POWERS OF AMERICAN RELIGIOUS CORPORATIONS.

RELIGIOUS corporations in the United States have assumed various shapes. The original two forms, (corporation sole and territorial parish) being unsuited to our conditions, have completely passed away. In their stead have grown up four other classes, the aggregate corporation, the trustee corporation, the modern form of the corporation sole, and the Roman Catholic Church in our insular possessions.[1] These four kinds of corporations, however diverse they may be in their history and otherwise, have a number of important qualities in common. None of them are ecclesiastical corporations in the European sense of the word. All of them owe their existence, not to the authority of the church, but to the authority of the state. The Roman Catholic Church is recognized as a corporation by virtue of the treaty of 1898 with Spain, while the other corporations mentioned derive their life from their charters granted to them by the states of their domicile. All are private, civil corporations, created merely for the purpose of conducting the temporal affairs of the particular church of which they are the handmaids.

It follows that their powers are limited. While a natural person has powers which are limited only by the rights of others as declared by law, religious corporations, like other corporations, are confined to such powers as are expressly or impliedly authorized by their charters. They must remain within such limits as the legislature or the treaty making power has marked out for them. Their charters are to them what the United States constitution is to the federal government. All power exercised by them must be traced back to the charters either directly or by implication.

In examining the various charters that have been granted by the various legislatures to religious bodies, either directly by special legislation or indirectly through general incorporation acts, a great variety of forms will be found. Some charters are very explicit and full, while others are couched in the briefest possible terms. All, however, give the corporation such powers to acquire and sell property and make contracts, as the legislature has deemed necessary for the due administration of their affairs. They also, usually in express terms, confer power on the corporation to make bylaws. These powers and their limitations will now be considered. The

[1] See the author's article "Classes of American Religious Corporations," in the May issue of this Review.

legislative power, or power to make bylaws, is largely used to regulate the administrative functions of the corporation. It will therefore be disposed of before the administrative powers are taken up.

1. *Legislative Powers.*

The supreme law of a religious corporation will be found in the laws constituting its charter. "The charter of every corporation is its constitution, which protects the rights of all the corporators, majority and minority. Acting within the charter, the corporation majority is sovereign; but seeking to transcend it, the majority become powerless."[2] These laws cannot be abrogated by any action taken by the corporation. The only power which can even change them is the legislature which has enacted them.

But while the charter is supreme, it is not the only law to which a religious corporation may be subject. It is impossible for the legislature, particularly under general incorporation acts, to foresee and make provision for every possible contingency with which any particular corporation may be confronted. And if it were possible, it would not be expedient to make the attempt, as it would make the statute so bulky as to defeat this purpose. The charter laws will therefore generally be found to be but a bare outline of the various powers conferred on the corporation. The manner in which these powers are to be exercised is left to the discretion of each particular corporation. The power to make bylaws for this purpose, where it is not expressly granted, will therefore be implied, unless it is expressly excluded by the terms of the charter.[3]

Since religious corporations are generally of such small size that all the corporators can be assembled in one meeting, the proper body to formulate such bylaws is prima facie a regular or special meeting of such corporators. However this power may also be conferred on the board of trustees or some other committee of the corporation, either by the charter itself or by some resolution passed by the corporators. This select body will thereupon act in the same capacity in which a city council acts in passing city ordinances, and may therefore pass bylaws binding upon all the corporators.[4]

The procedure by which such bylaws are enacted, may be of the simplest character. In the case of city ordinances a great deal of form is generally required. There are various readings of the pro-

[2] Langolf v. Seiberlitch, 2 Pars. Eq. 64, 74.

[3] Curry v. First Presbyterian Congregation, 2 Pitts 40; Taylor v. Edson, 58 Mass. 522, 526.

[4] Papiliou v. Manusos, 113 Ill. App. 316; see Vestry of St. Luke's Church v. Mathews, 4 Desaus. 578, 6 Am. Dec. 619.

posed ordinance, public notice and the like. No such requirements are exacted in the case of a bylaw. It need not even be reduced to writing. Mere customs and usages may be recognized as such. A resolution by a congregation, passed before the corporation was formed, will have the force of a bylaw as against those who voted in its favor and acted in accordance with it.[5] "A religious corporation, like any other, is bound by the acts of its authorized agents in matters that are within its corporate capacity, and may, by the enactment of bylaws, or the distribution of the exercise of its powers among its various officers, or by conferring authority upon special agents, so charge itself as to become amenable for the acts of individuals representing it, and acting by its authority."[6]

It has been seen that bylaws validly passed are a part of the law governing the corporation and its members. It follows that they must be obeyed by the corporation. "A person who voluntarily joins a church, and tacitly at least, agrees to be bound by all the rules and regulations of such church, cannot afterwards be allowed to wholly ignore and disregard such rules and regulations. As to all matters pertaining to the church, he is clearly bound by the rules and regulations of the church, unless the same are clearly illegal."[7]

Before proceeding to the subjects which may be covered by such bylaws, it may be well to refer briefly to the inherent limitations to which they are subject. It is clear that a bylaw which conflicts with the charter of the corporation is absolutely void. If it were otherwise, the corporation by its own act could abolish the law to which it owes its existence. "All bylaws to be of legal validity must be made in conformity with the charter. They are but the working machinery of the charter, and are required to be framed to move in harmony with it. They are like acts of the legislature, which must be consistent with the constitution."[8] Where, therefore, the charter prescribes that certain conditions must be fulfilled by prospective voters for two years before they may be allowed to vote, such time cannot, by bylaws, be reduced to six or three months.[9] Neither can a statutory provision, imposing certain duties upon the "register" of the corporation, be abrogated by a church canon imposing such duties upon the rector.[10]

Even if a bylaw does not conflict with any express terms of the

[5] Vestry of Christ Church v. Simons Executor, 2 Rich. Law 368.

[6] Constant v. St. Albans Church, 4 Daly 305, 308.

[7] Venable v. Ebenezer Baptist Church, 25 Kans. 177, 182.

[8] Langolf v. Seiberlitch, 2 Pars. Eq. 64, 76; Prickett v. Wells, 117 Mo. 502, 24 S. W. 52; Calkins v. Cheney, 92 Ill. 463; People ex rel. Hart v. Phillips, 1 Denio 388.

[9] Raynor v. Beatty, 9 W. N. C. 201.

[10] Torbert v. Bennett, 24 W. L. R. 149.

charter, it may nevertheless be void. The statutes contemplate that the affairs of the corporation are to be carried on in a reasonable manner.[11] It follows that such bylaws to be valid must be reasonable.[12] The power to make them should "be exercised with great caution, with no sinister design and without counteracting the charter or substituting a new rule."[13] A by-law reuiring the payment of fifty dollars from each corporator as a prerequisite to voting[14] or which provides that it is to be revoked only by unanimous vote of all the corporators[15] will therefore be held to be void. The courts will enforce bylaws only where they move within the limits of the charter.[16]

The question, how long a bylaw is to remain in force, depends entirely upon the pleasure of the corporation. It can by long continued disregard repeal a bylaw, so that the courts will refuse to enforce it.[17] It can also expressly repeal any bylaw at any time by majority vote, and any provision in such bylaw, that it is not to be so repealed, will be nugatory and void.[18] A bylaw made by one meeting, to govern the proceedings of future meetings, is inoperative beyond the pleasure of the corporation acting by a majority vote at any regular meeting. The power of the society to enact bylaws is continuous, residing in all regular meetings of the society, as long as it exists. Any meeting can, by a majority vote, modify or repeal the law of a previous meeting, and no meeting can bind a subsequent one by irrepealable acts or rules of procedure. The power to enact is a power to repeal.[19]

The question of membership is not usually covered by the charter. Yet it is of supreme importance to each religious corporation. While growth, rapid growth if possible, is the aim of all these bodies, a growth that is too rapid and brings too many heterogeneous elements into the corporation will often lead to precipitate decay and disintegration. A restriction on its membership is therefore within the power of the corporation. This may be accomplished by a judicious use of the black-ball. It may also be done by bylaws de-

[11] Saltman v. Nesson, 201 Mass. 534, 88 N. E. 3.

[12] Bretzlaff v. Ev. Luth. St. John's Benefit Soc., 125 Mich. 39, 83 N. W. 1000; Hussey v. Gallagher, 61 Ga. 86; Saltman v. Nesson, 201 Mass. 534, 88 N. E. 3.

[13] Vestry of St. Luke's Church v. Mathews, 4 Desaus. 578, 586, 6 Am. Dec. 619.

[14] Vestry of St. Luke's Church v. Mathews, supra; see Commonwealth v. Cain, 5 S. & R. 510.

[15] Saltman v. Nesson, 201 Mass. 534, 88 N. E. 3.

[16] Alexander v. Bowers, 79 S. W. 342 (Tex.).

[17] Commonwealth v. Cornish, 13 Pa. 288.

[18] Saltman v. Nesson, 201 Mass. 534, 88 N. E. 3; Wardens of Christ Church v. Pope, 74 Mass. 140, 142.

[19] Richardson v. Union Congregational Society, 58 N. H. 187.

claring what shall constitute membership and what shall operate to cause a forfeiture of it. Such bylaws may be passed, not only where the charter expressly authorizes them, but also where it is merely silent on the subject.[20] A corporation which considers certain other societies as inimical to its purposes may therefore, by bylaw, debar members of such hostile organizations and will be justified in expelling a member for joining such a society.[21] They may even, after his death, deny to his relatives the benefits on account of which he has become a member.[22]

Perhaps the most important duty of a member of a religious corporation is the payment of his dues. A member who does not pay them, particularly when he is able to do so, becomes worse than useless to the organization. He may even, in connection with others in the same position, become a positive meance to it. Therefore the corporation, while it cannot bar a member because he has not been specially admitted to vote or has not paid an amount in addition to his dues,[23] may pass a bylaw disfranchising a voter who has not paid his ordinary dues, though the number of voters is thereby reduced to narrower limits than were marked out by the charter.[24] Similarly, where pews are leased, the corporation may adopt a bylaw to assess them though both its charter and the deed under which they are held are silent on this subject.[25]

Where no bylaws have been made in regard to the expulsion of members, the common law rules as to such expulsion will have to be followed. A member, under such circumstances, cannot be expelled except after notice of the charges against him is given and he has been presented with an opportunity to make his defense.[26] Nor can he be expelled from the corporation (as distinguished from the church) for mere moral delinquency.[27] Some action by the corporation declaring his status will generally be necessary. A bylaw which provides that "any member who shall either cease to regularly worship with the society, or who shall fail to contribute to the support of its public worship for the term of one year, shall have his

[20] Taylor v. Edson, 58 Mass. 522, 526; but see People v. Young Men's Society, 41 Mich. 67.

[21] Mazurkiewicz v. St. Adelbertus Society, 127 Mich. 145, 86 N. W. 543, 54 L. R. A. 727.

[22] Bretzlaff v. Ev. Luth. St. John's Benefit Society, 125 Mich. 39, 83 N. W. 1000.

[23] Vestry of St. Luke's Church v. Mathews, 4 Desaus. 578, 6 Am. Dec. 619.

[24] Taylor v. Edson, 58 Mass. 522; Commonwealth v. Cain, 5 S. & R. 510.

[25] Curry v. First Presbyterian Congregation, 2 Pitts. 40; see Mussey v. Bulfinch Street Society, 55 Mass. 148.

[26] Jones v. State, 28 Neb. 495, 44 N. W. 658, 7 L. R. A. 325.

[27] People v. German United Evangelical St. Stephens Church, 53 N. Y. 103, reversing 6 Lans. 172, affirming 3 Lans. 434.

or her name dropped from the list of members" cannot automatically enforce itself. The tests provided for are so vague that some action by the corporation, applying this bylaw to any particular case, is necessary before it will result in ousting any particular corporator.[28]

Where special meetings of the corporation may be called at any time without stating their purpose, a small determined faction of the corporators may succeed, by adroit management, to impose its will on the corporation. Such an undesirable result can be avoided, or at least made difficult of accomplishment, by a bylaw which requires the object of such meetings to be stated in the notice. Where such a bylaw exists, an admission of new members at a special meeting, not noticed as required by it, will be held void and of no effect.[29]

The rules to be observed by a corporation while holding its elections are not generally prescribed by the charter. Yet such rules are necessary, and the power to make them, not having been exercised by the legislature, must reside in the corporation itself. Therefore a bylaw which requires the assent of the bishop for the election of lay trustees is valid and enforcible.[30] A bylaw which declares void all ballots which have on them anything but the vote, and authorizes the president of the corporation to appoint two inspectors of election to enforce this provision, will be upheld as reasonable, consistent with the charter, and tending to the due discharge of business.[31]

Where a religious corporation is authorized by its charter to issue stock certificates, these will be like other certificates of stock. They will represent a certain proportion of the property of the corporation, but will not be redeemable in cash at the wish of the holder. Where however a bylaw has been passed, making the stock of such members as have paid an additional sum, redeemable in cash, such bylaw will become a part of the contract, under which the stock was taken, and will be enforced by the courts.[32]

We have thus far considered the powers of a religious corporation to pass bylaws. These, like statutes passed by a legislature or ordinances passed by a city council, are not an end in themselves but rather a means to an end. They are passed principally to guide the action of the various committees of the corporation and thus help to accomplish the proper administration of its temporal affairs. This administrative side of the matter will now be considered.

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[28] Gray v. Christian Society, 137 Mass. 329, 50 Am. Rep. 310.

[29] Gray v. Christian Society, supra.

[30] St. Hyacinth Congregation v. Borucki, 141 Wis. 205, 124 N. W. 284.

[31] Commonwealth v. Woelper, 3 S. & R. 29, 8 Am. Dec. 628.

[32] Davis v. Second Universalist Meeting House in Lowell, 49 Mass. 321.

2. *Administrative Powers.*

The possession of property, real or personal, by religious organizations is the cause of the various incorporation acts that have been passed in their favor. As long as a religious society possesses no property, it can get along very well without corporate existence. The acquirement of property will however not only raise the question, who is to hold the title, but will also bring the members of the church into contract relations with others. In all these respects the unincorporated associates are at a disadvantage. They will not have the direct control over their property that corporate existence would afford them. They will meet difficulties in making contracts for improvements of it. The inducements for them to incorporate, and thereby to obtain the most advantageous position before the law and the best business relations with third persons, are thus very strong.

But the possession of property is not only the reason why church societies should incorporate, but is also the basis of the work which they perform. Even the employment of a minister may be connected with the property owned by the corporation. A church building without divine service would certainly be a very unprofitable investment. Divine services will generally be impossible without a minister. The services of a minister are therefore necessary to give the meeting-house any substantial value. All acts of a religious corporation, even the contracts which it makes, can thus be traced back to the property which it owns. The right to acquire property and to sell, mortgage or lease it, thus become of great importance to every religious corporation.

While natural persons are restrained in acquiring property only by the rights of others, religious corporations, being the creatures of law, may be and usually are confined to narrower limits.[33] These limitations however do not apply to personal property. As to this the law has given them a free hand. If therefore a religious corporation has surplus funds, it may invest the same in any way such as buying stock in a Sunday school association[34] or in a bank.[35]

The line is however much more closely drawn in regard to real estate. There was a time in England when churches, through devises and other means, were acquiring land so fast and in such quantities as to arouse Parliament to restraining measures. Accordingly

[33] Trustees v. Dickinson, 12 N. C. 189, 202.

[34] State v. Rohlffs, 19 Atl. 1099 (N. J.).

[35] Davis v. First Baptist Society, 44 Conn. 582; United Society v. Eagle Bank, 7 Conn. 456; Bishops Fund v. Eagle Bank, 7 Conn. 475.

mortmain statutes were passed from time to time to prevent the "dead hand" of the church from monopolising the soil. In America there is no such call for such measures. The quantity of land is so great, and its speculative value so small, as to present little inducement to churches to acquire land not needed for their legitimate purposes. Moreover the great majority of American churches have all they can do to meet their current expenses and are in no position to accumulate property. Hence some states do not restrain church corporations at all in the acquisition of real property.

There are other states however which have, to a greater or less extent, adopted the policy of the English mortmain statutes. Thus Maryland, by its constitution, has made the assent of the legislature a condition precedent to the acquisition of real property by religious corporations.[36] The legislature is made the judge, in each instance, of the question whether the acquirement of realty by a church corporation is proper and necessary. The inconvenience incident to such a requirement has, however, been overcome by reading such a consent out of a charter which authorizes the corporation to acquire realty.[37]

Where restraining measures are passed, but no unlimited discretion is vested in any particular body, it becomes necessary to provide some test by which the amount of property which religious corporations will be permitted to acquire, may be determined. This test may be certain money value or such quantity of land as may be needed by the corporation for its legitimate purposes. Thus Congress has limited the value of real estate of any church corporation in the territories to $50,000 and has provided for a forfeiture and escheat of the excess.[38] The Iowa legislature has established no restriction as to quantity or value but only as to the purposes for which the property is to be acquired and applied.[39] It is obvious that these tests are quite vague and may easily lead to disagreeable controversy. Questions of value, as well as the question of how much land is needed by any particular church, are matters of opinion, on which honest men may differ widely. Both these tests have, therefore, generally been abandoned and a limitation, simply on the quantum of land to be held by the corporation, substituted in their stead.

[36] Grove v. Trustees, 33 Md. 451.

[37] Rogers v. Sisters of Charity of St. Joseph, 97 Md. 550, 55 Atl. 318.

[38] United States v. Church of Jesus Christ, 5 Utah 361, 15 Pac. 473.

[39] Miller v. Chittenden, 2 Iowa (2 Cole) 315, 361; see Catholic Church v. Tobbein, 82 Mo. 418, 424.

These amounts differ widely in the various states. The decided cases show that they vary between two and forty acres.[40]

Under such statutes the value of the land and its adaptability to the purposes of the church become immaterial. A statute which covers only quantity will not be construed to cover quality.[41] Whether the quantum of land allowed to a church is situated in the business center of a populous city or in some uninhabited locality, whether it represents a fortune or a mite, is of no consequence. Church corporations will know their limitations and will be able to arrange their affairs in such a way as to achieve their end without conflicting with the law. Whatever may be thought of the policy of such mortmain statutes, as applied to American conditions, there can be no doubt that, such policy being determined upon, a limitation by quantity rather than by value or purpose is the most adequate, feasible and definite test that can be adopted.

This limitation, however, refers only to land held for their own use. Where they hold land in trust for others as they may[42] such land is not their own but belongs to the cestui que trust. They have only the legal title, which is rather a burden than a benefit. There can be no reason why they should not be allowed to assume this burden. Therefore a devise to a church of land in excess of its power to acquire "to be applied to foreign missions" is perfectly good and valid.[43]

Nor must the statute be construed to include every corporation which in any sense may be called a religious corporation. Mission Societies, publishing firms, colleges, and universities exist in connection with religious bodies. It is quite obvious that some of these bodies imperatively require more land or land of greater value than is permitted by the statute to religious corporations. It is not the purpose of the law to strangle such deserving institutions. Hence such statutes will be confined to religious corporations whose mem-

[40] **Two acres:** Dangerfield v. Williams, 26 App. D. C. 508, 516. **Five acres:** University v. Calvary M. E. Church, 104 Md. 635, 65 Atl. 398; Dickerson v. Franklin Street Presbyterian Church, (Md.) 66 Atl. 494. **Ten acres:** Andrews v. Andrews, 110 Ill. 223; St. Peter's Roman Cath. Church v. Germain, 104 Ill. 440. **Twenty acres:** Morgan v. Leslie, 1 Wright (Ohio) 144. **Forty acres:** Kinney v. Kinney's Executor, 86 Ky. 610, 6 S. W. 593.

[41] Andrews v. Andrews, 110 Ill. 223.

[42] Whitelick Quarterly Meeting v. Whitelick Quarterly Meeting, 89 Ind. 136; White v. Rice, 112 Mich. 403, 70 N. W. 1024; Tabernacle Baptist Church v. Fifth Ave. Baptist Church, 70 N. Y. Supp. 181, affirmed 172 N. Y. 598; In re Williams Estate, 23 N. Y Supp. 150; In the matter of Howe, 1 Paige 214.

[43] Kinney v. Kinney's Executor, 86 Ky. 610, 6 S. W. 593; see also Germain v. Baltes, 113 Ill. 29.

bers "meet for worship in any one place" and will not be extended to synods and similar bodies.[44]

Since the statutory regulations differ so widely on this subject, it is not surprising that intricate questions of private international law or conflict of laws have occasionally arisen in connection with them. Church corporations, which, by the law of their domicile, have absolute power to acquire real estate, will sometimes be the beneficiaries of a devise in a state, which imposes such a limitation on religious corporations, as to render the devise invalid if it had been given to a domestic corporation. Such a devise, however, has been upheld by the United States Supreme Court.[45] The Ohio court has even allowed the foreign corporation to take such land, though on account of a peculiar provision of the statute of wills in the state of its domicile, it could not have taken it, if the will had been made in such state.[46]

On the effect of such statutes on deeds made in contravention of them to religious corporations the authorities are divided. Some cases hold such deeds to be absolutely void and capable of being attacked in a collateral proceeding,[47] while others hold that the defect can be taken advantage of only by the state in a direct proceeding for that purpose.[48] They may however serve as a good "color of title" for the purposes of adverse possession. It follows that a church corporation may, through adverse possession under such a deed, acquire more property than the statute allows.[49]

Not less important than the right to acquire property is the right to dispose of it by sale, mortgage, lease or in any other manner. There would seem to be no reason to limit or control such disposition. Yet such a policy has been adopted by one important state. It becomes necessary therefore to treat of the limitation to which such disposal may be subject in the hands of a religious corporation.

The power of church corporations to sell their real estate will depend, in the first place, upon the conditions, if any, under which it is held. It is elementary law that a sale in breach of such conditions will work a forfeiture of the title to the original owner.[50] Similar reasoning has also been applied to land held under an express

[44] Morgan v. Leslie, 1 Wright (Ohio) 144.

[45] American and Foreign Union v. Yount, 101 U. S. 352.

[46] American Bible Society v. Marshall, 15 Oh. St. 537.

[47] St. Peter's Roman Catholic Congregation v. Germain, 104 Ill. 440.

[48] Hanson v. Little Sisters of the Poor, 79 Md. 434; Bogardus v. Trinity Church, 4 Sandf. Ch. 633, 758; DeCamp v. Dobbins, 29 N. J. Eq. 36.

[49] Dangerfield v. Williams, 26 App. D. C. 508.

[50] Patrick v. Y. M. C. A. of Kalamazoo, 120 Mich. 185, 79 N. W. 208; General Assembly of Presbyterian Church v. Alexander, 20 Ky. Law Rep. 391, 46 S. W. 503.

or implied trust,[51] though the weight of authority, in cases where the property has become inconvenient or useless, favors the practice of allowing the sale and attaching the trust either to the proceeds or to the property acquired with these proceeds.[52] "There is no good reason why a perpetual restraint should be placed upon the alienation of the estate of religious societies. That which is suited to the present, by a change of times becomes unsuited for the future. The unpretending church or modest parsonage or primitive schoolhouse of a village or borough town becomes unsuited to the growth, situation or progress of taste and culture of a large city. The ground itself often becomes the most valuable possession, and by a sale may add greatly to the welfare of the body, enabling it to erect finer edifices, better adapted to the change of times and circumstances. Conversion is not destruction, and can be made for the benefit of the trust. No solid objection lies to the change of church property so long as its true purpose is preserved. A sale is frequently the best mode of executing the trust."[53]

Any limitation of the power to alienate, because of conditions or trusts, however, is not due to any inherent lack of power on the part of the corporation, but to the contract into which it has entered and which it will not be allowed to break. In the absence of such contract the corporation, unless specially restrained by its charter, has the inherent right, without any express authority, to dispose of its property,[54] and such disposition will be approved by the courts.[55] The sale however, whether under an express or implied charter authority, should be a sale in good faith. "A power to dispose of corporate estate for the use of the corporation does not mean a power to convey it to trustees to employ it under trusts purporting to be for

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[51] Reed Howard, et al. v. Stouffer, 56 Md. 236; Avery v. Baker, 27 Neb. 388, 43 N. W. 174, 20 Am. St. Rep. 672.

[52] Griffiths v. Cope, 17 Pa. 96; Wiswell v. First Congregational Church, 14 Oh. St. 31; Ryan v. Porter, 61 Tex. 106; In re First German M. E. Church of Scranton, 1 Lack. L. N. 89; Hardy v. Wiley, 87 Va. 125, 12 S. E. 233; In re Van Horn, 18 R. I. 389, 28 Atl. 431; Phillips v. Westminster Church, 225 Pa. 62, 73 Atl. 1062; Starr v. Starr Methodist Protestant Church, 112 Md. 171, 76 Atl. 595; Mills v. Davison, 54 N. J. Eq. 659, 35 Atl. 341; Phillips v. Westminster Church, 225 Pa. 62, 73 Atl. 1062; Starr v. Starr Metho-Episcopal City Mission v. Appleton, 117 Mass. 326; Old South Society v. Crocker, 119 Mass. 1, 20 Am. Rep. 299; M. E. Society v. Harriman's Heirs, 54 N. H. 444; In re Seller's Chapel M. E. Church, 139 Pa. 61, 21 Atl. 145, 11 L. R. A. 282.

[53] Burton's Appeal, 57 Pa. 213, 218.

[54] Langolf v. Seiberlitch, 2 Pars. Eq. 64, 76.

[55] Eggleston v. Doolittle, 33 Conn. 396; Nelson v. Solomon, 112 Ga 188, 37 S. E. 404; Enos v. Chestnut, 88 Ill. 590; Catholic Church v. Manning, 72 Md. 116, 19 Atl. 599; Van Houten v. First Reformed Dutch Church, 17 N. J. Eq. 126; Holmes v. Wesley M. E. Church, 58 N. J. Eq. 327, 41 Atl. 102; United Presbyterian Church Petition, 166 Pa. 43, 30 Atl. 1012; Blanc v. Asbury, 63 Tex. 490, 51 Am. Rep. 666; Mason v. Muncaster, Fed. Cas. 9, 247.

the use of the corporation, but depriving them of all dominion and control over it."[56]

It remains to notice the restrictions by statute which have been placed on religious corporations in this regard. Occasionally a special charter may be found which in terms absolutely prohibits the sale of such property.[57] More frequently charters provide that the property is not to be conveyed except with the consent of a certain bishop or a certain church body. Where there is such a provision it will be enforced by the courts.[58] It will readily be seen that these restrictions are of little moment, except to the particular corporations which are subject to them.

There is however a general restriction imposed on all religious corporations in New York, which deserves a close analysis both on account of the importance of the state and the side light which is thrown by it on the absolute power to sell possessed by church corporations generally. The reason for this restriction in New York goes back to the time of Queen Elizabeth. During her reign and immediately after, several statutes were passed restraining the absolute power of religious corporations to alien their property. These statutes were considered as having been brought along by the colonists to the colony of New York.[59] This conception, together with the power which equity had over the real estate of church corporations under the trustee corporation theory, which flourished in the state till 1850,[60] cast a doubt over the title conveyed by any such corporation.[61] It therefore became the practice to petition the legislature for leave to sell, so as to be able to convey a clear title. This soon proved to be very burdensome, both to the petitioners and to the legislature. A statute was therefore passed in 1806 and re-enacted in 1813 as part of the religious incorporation act, making it lawful for the chancellor, on the application of any religious corporation, in case he should deem it proper, to make an order for the sale of any of its real estate and to direct the application of the moneys arising therefrom to such uses as the corporation, with the consent

[56] Langolf v. Seiberlitch, 2 Pars. Eq. 64, 76.

[57] Burton's Appeal, 57 Pa. 213, 218.

[58] Lane v. Calvary Church of Summit, 59 N. J. Eq. 409, 45 Atl. 702; In re First German M. E. Church of Scranton, 1 Lack. L. N. 89; Church of St. Bartholomew v. Wood, 80 Pa. St. 219; see also Presbytery v. Westminster Presbyterian Church, 127 N. Y. Supp. 851, 142 App. Div. 876.

[59] De Ruyter v. St. Peter's Church, 3 Barb. Ch. 119, 122, cited with approval in Wyatt v. Benson, 23 Barb. 327, 333; Madison Avenue Baptist Church v. Baptist Church of Oliver St., 46 N. Y. 131, 142; see Dudley v. Congregation of St. Francis, 138 N. Y. 451, 456.

[60] Robertson v. Bullions, 11 N. Y. 243.

[61] Dutch Church in Garden St. v. Mott, 7 Paige 77, 84.

and approbation of the chancellor, should conceive to be most for its interest.[62]

Though this act in terms was merely permissive, the courts, by judicial construction of it, soon were firmly committed to the doctrine that it operated to forbid sales of real estate by religious corporations without their assent.[63] The word sale was construed to include a mortgage[64] though it was pointed out that a mortgage is a lien rather than a sale.[65] Investors were thus forced to insist on a judicial approval of every mortgage issued by a church corporation.[66]

This however is the extent to which the courts have extended the statute by judicial construction. In all other regards the enactment is recognized as impairing what would otherwise be a common law right, and is therefore strictly construed.[67] The court's consent need only be procured for an actual sale of real property by a religious corporation. A deed as a gift,[68] a purchase money mortgage,[69] an agreement to sell,[70] a sale in a partition action,[71] or a reservation of a right of way over land, granted to a church corporation, though such reservation has taken the form of an independent deed by such corporation,[72] will not be regarded as sales within the statute. A church put on rollers and moved off the land,[73] or property acquired subject to a land contract,[74] will be treated as personal rather than real property. A quasi corporation will not be considered as a religious corporation within the meaning of the act.[75] The cases in which the courts may act are thus quite limited.

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[62] In the matter of the Brick Presbyterian Church, 3 Edw. Ch. 155, 166.

[63] Dudley v. Congregation of St. Francis, 138 N. Y. 451, 456, 457.

[64] Dudley v. Congregation of St. Francis, 138 N. Y. 451, affirming 65 Hun. 21, 19 N. Y. Supp. 605.

[65] Manning v. Moscow Presbyterian Society, 27 Barb. 52.

[66] In re St. Ann's Church, 23 How. Pr. 285; In re Church of the Messiah, 25 Abb. N. C. 354, 12 N. Y. Supp. 489; see cases cited in Moore v. Rector of St. Thomas, 4 Abb. N. C. 51.

[67] Congregation Beth Elohim v. Central Presbyterian Church, 10 Abb. Pr. (N. S.) 484, 489.

[68] Muck v. Hitchcock, 212 N. Y. 283, 106 N. E. 75; Madison Avenue Baptist Church v. Baptist Church of Oliver St,, 46 N. Y. 131, 143, s. c. 73 N. Y. 82.

[69] South Baptist Society v. Clapp, 18 Barb. 35, 47.

[70] Congregation Beth Elohim v. Central Presbyterian Church, 10 Abb. Prac. (N. S.) 484; Bowen v. Irish Presbyterian Congregation, 19 N. Y. Sup. Ct. 245.

[71] New York Home Missionary Society v. First Free Will Baptist Church, 130 N. Y. Supp. 879, 73 Misc. 128.

[72] Protestant Reformed Dutch Church v. Bogardus, 5 Hun. 304.

[73] Beach v. Allen, 7 Hun. 441; see In re Second Baptist Society in Canann, 20 How. Pr. 324, holding that no consent of the court need be asked for the removal of the church to another site.

[74] Edelstein v. Hayes, 100 N. Y. Supp. 403, 50 Misc. Rep. 130.

[75] Feiner v. Reiss, 90 N. Y. Supp. 568, 98 App. Div. 40.

But this is not all. Where they have jurisdiction, their powers in the matter are also severely limited. They have no original power over the property. Such power could not consist with the principle of universal toleration of religious opinions and organizations and abstinence of all intermeddling in their affairs. They cannot, therefore, originate any scheme either for the sale of the property or the disposition of the proceeds.[76] They can only say yes or no in regard to any plan proposed by the corporation. They can only regulate and permit. They can protect the members of the corporation from the perversion of their property through unwise bargains;[77] they can protect the corporation itself against dissolution by a transfer of all its property to another similar corporation;[78] they can refuse an application for a sale, where it is shown that the majority of the corporators are opposed to it,[79] though the petition on the part of the trustees need not show that they have consented to it,[80] but they cannot dictate to the corporation what it shall do. The agreement of the corporation is indispensible and the option to sell or not to sell, down to the moment when a valid contract for the sale is made, belongs entirely to it.[81] The order of the court is simply an authority to the church to complete its voluntary undertaking and gives the deed regularity of form. It does not make the sale a judicial one[82] nor an adjudication between the parties.[83] A New York religious corporation, therefore, "has the title to its real property, may determine when it should be sold, and has the sole and exclusive power to enter into contracts for that purpose. The only distinction which exists between its power of alienation and that possessed by other corporations is that the consent of the court is necessary."[84]

While thus the jurisdiction of the courts is quite limited in more than one respect, where they have jurisdiction their assent must be

[76] Wheaton v. Gates, 18 N. Y. 395, 402.

[77] Congregation Beth Elohim v. Central Presbyterian Church, 10 Abb. Pr. (N. S.) 484, 489; In re Reformed Church at Saugerties, 16 Barb. 237; Muck v. Hitchcock, 212 N. Y. 283, 106 N. E. 75.

[78] Wheaton v. Gates, 18 N. Y. 395; see Massachusetts Baptist Missionary Society v. Bowdoin Square Baptist Society, 212 Mass. 198, 98 N. E. 1045.

[79] Wyatt v. Benson, 23 Barb. 327, 4 Abb. Pr. 182; Matter of Brick Presbyterian Church, 3 Edw. Ch. 155.

[80] Madison Avenue Baptist Church v. Baptist Church of Oliver St., 46 N. Y. 131, s. c. 73 N. Y. 82, affirming 11 Abb. Pr. (N. S.) 132; In re St. Ann's Church, 23 How. Pr. 285; Burton's Appeal, 57 Pa. 213, 25 L. I. 325.

[81] Bowen v. Irish Presbyterian Congregation, 19 N. Y. Super. Ct. 245 266, 267.

[82] Christie v. Gage, 71 N. Y. 189.

[83] St. James Church v. Redeemer Church, 45 Barb. 356, 31 How. Pr. 381.

[84] Congregation Beth Elohim v. Central Presbyterian Church, 10 Abb. Pr. (N. S.) 484, 488; see Bowen v. Irish Presbyterian Congregation, 19 N. Y. Super. Ct. 245, 267.

procured or the transaction will be void though it consists only of a mortgage[85] or the sale of a pew.[86] The courts will not even allow the statute to be frittered away by the application of the principles of estoppel.[87]

The question whether church corporations in New York can consolidate by a transfer of all the property of one to the other has given rise to serious embarrassment. Applications have been made to the courts for an approval of such arrangements. It has been held that since the purpose of the statute is to protect the church corporation from unwise bargains in cases where it can be ascertained whether the consideration is adequate and the proposed investment judicious,[88] the statute can have no application to such a situation.[89] Neither will the courts approve of a division of such property between two churches, into which the corporation has divided.[90] To make such arrangements binding, the consent of the legislature must be procured in New York.

The inherent faults of this New York doctrine are obvious. Its historical foundation is so faulty that other states,whose early settlers have equally come from England, have refused to recognize it. It makes church corporations the wards of the courts and thus leads to litigation which might as well be avoided. It throws obstacles in the way of a consolidation of religious corporations and fetters the free transfer of their property. In its ordinary application it inevitably degenerates into a mere matter of form. It is to be hoped, therefore, that the New York legislature may repeal the statutes which have brought about this condition of things, including the English statutes, so far as they are applicable, or are supposed to be applicable, to the state.

Next in importance to the power to sell is the power to mortgage or lease church property. Without such power church property would often have to lie fallow, or at least would be prevented from achieving its highest usefulness. The power of church corporations to mortgage or lease their property is therefore usually granted in

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[85] Dudley v. Congregation of St. Francis, 138 N. Y. 451.

[86] Dutch Church in Garden Street v. Mott. 7 Paige 77, 32 Am. Dec. 613; In re Reformed Dutch Church in Saugerties, 16 Barb. 237; Montgomery v. Johnson, 9 How. Pr. 232.

[87] Associate Presbyterian Congregation of Hebron v. Hanna, 98 N. Y. Supp. 1082, 113 App. Div. 12.

[88] Muck v. Hitchcock, 212 N. Y. 283, 106 N. E. 75.

[89] Madison Avenue Baptist Church v. Baptist Church of Oliver St., 46 N. Y. 131, 143 s. c. 73 N. Y. 82.

[90] Reformed Church v. Schoolcraft, 65 N. Y. 134, 143; see contra Wiswell v. First Congregational Church, 14 Oh. St. 31.

express terms.[91] Even where it is not so granted, it will be implied from the more general power to sell, as incident to the very existence of the corporation. Some express or clearly implied prohibition by the legislature will, in such case, be required to deprive the corporation of this power.[92]

Where the terms of the charter are ambiguous, such a construction of them will be adopted as will uphold the mortgage or lease. A charter which authorizes the corporation to sell and convey, mortgage or lease any of its real estate, provided that no such sale or conveyance shall be made, except with the consent of two-thirds of the society, will be construed to limit only the power to sell and convey and not the power to mortgage or lease.[93] Nor will a church corporation be allowed, by a trust of its own creation, to protect the property it has mortgaged from its creditors and shield it from appropriation for the payment of its just debts.[94] It follows that such mortgage, after breach of condition, may be foreclosed like any other mortgage,[95] and the purchaser on foreclosure will acquire full title after the redemption period has elapsed.[96]

The power of a church corporation to lease its property is equally well established. It does not require the citation of authorities to show that pews may be leased to members or others. Without such power to lease pews, there could be no churches, in which pews are not "free." But the power to lease goes further. The entire meeting house may be leased for a particular purpose. A church may lease its building to a convention of the same faith,[97] or to the school board for a public school,[98] or for a fourth of July celebration,[99] and even for opera house purposes.[100] Where the property has become unsuitable for church purposes, it may even be leased under an agreement that a business building is to be erected on it for which

[91] Zion Church of Sterling v. Mensch, 178 Ill. 225, 52 N. E. 858, affirming 74 Ill. App. 115; Trustees M. E. Church v. Schulze, 61 Ind. 511; Keith & Perry Coal Co. v. Bingham, 97 Mo. 196, 10 S. W. 32.

[92] Walrath v. Campbell, 28 Mich. 111. Such, in a limited sense, is the case in New York where, as has already been seen, such a mortgage must be approved by the court before it will become binding.

[93] Scott v. First Free Methodist Church, 50 Mich. 528, 15 N. W. 891.

[94] Magie v. German Ev. Dutch Church, 13 N. J. Eq. 77.

[95] Mills v. Davison, 54 N. J. Eq. 659, 35 Atl. 1072; New York City Baptist Mission Society v. Tabernacle Baptist Church, 17 Misc. 699.

[96] M. E. Church v. Gamble, 26 Oh. Cir. Ct. Rep. 295.

[97] Warner v. Bowdoin Square Baptist Society, 148 Mass. 400, 19 N. E. 403.

[98] Millard v. Board of Education, 19 Ill. App. 48, affirmed 121 Ill. 297, 10 N. E. 669.

[99] Jackson v. Rounseville, 46 Mass. 127.

[100] Catholic Institute v. Gibbons, 3 W. L. B. (Ohio) 581. The court points out that religious instruction has sometimes been given by means of the stage.

the church corporation, on the termination of the lease, agrees to pay "a just and reasonable sum."[101]

Closely connected with the power to buy, sell, mortgage and lease property is the power to make contracts. Without power to own and handle property there would be little or no call for the power to make contracts. Without the power to make contracts property could not ordinarily be acquired or aliened. Without such power to bind itself and others by contract, a religious corporation could not fulfill its legitimate functions. The power to make contracts is therefore generally granted, in general terms, in the various charters. These contracts may be (1) with its own members, (2) with other religious corporations, (3) with persons and corporations generally.

Since a religious corporation is, in legal contemplation, a separate entity, it may make contracts with its own members. In the case of ordinary corporations these contracts usually take the form of stock subscriptions. It has been stated that the chief distinction between church corporations and business corporations is that in the former there are no stock holders.[102] While this is generally true, charters will occasionally be found which authorize the issue of such stock by church corporations.[103] Where this is the case, courts will enforce a contract by which a subscriber, by the payment of three dollars additional on each of his shares, has acquired the right to have his shares redeemed in cash.[104]

But the issue of shares of stock may even be upheld, at least in collateral proceedings, though the charter is entirely silent on this matter. Thus the Missouri court has held valid a levy of execution on such stock, though it was contended that such business feature of the corporation was of no effect and might be disregarded, because foreign to the object of the charter and therefore contrary to the laws governing the corporation.[105]

While contracts for stock subscription in a religious corporation are rare, contracts for voluntary subscriptions, to defray the ordinary expenses of the church or to make improvements on the church property, are correspondingly numerous and have frequently come before the various courts. The power of church corporations to make these contracts is undoubted. "In this country, all support of

[101] Hollywood v. First Parish in Brockton, 192 Mass. 269, 78 N. E. 124; but see First M. E. Church v. Dixon, 178 Ill. 260, 52 N. E. 887 reversing 77 Ill. App. 166.

[102] Reis v. Rohde, 34 Hun. 161, 164.

[103] Rogers v. Danby Universalist Society, 19 Vt. 187, 192.

[104] Davis v. Lowell, 49 Mass. 321.

[105] St. George's Church Soc. v. Branch, 120 Mo. 226, 243, 25 S. W. 218, 222.

religion being voluntary, there can be no question that solicitation is within the scope of the powers which every religious corporation enjoys."[106] It has therefore been held, that a subscription contract, made with a religious corporation, is valid[107] though it is in terms made with an individual and is not reduced to writing.[108]

Where voluntary subscriptions have proved to be insufficient, resort has been had to assessments on the members of the corporation. These have usually taken the form of pew rent. Where the pews in a church are held by or leased to individuals, there can be no question of the power of the corporation to make contracts in regard to them, by which they are not merely deeded or leased, but by which the right to levy an assessment on them is retained. This power is so obviously necessary to a religious corporation that it will be implied, when it has not been granted in express terms.[109]

At common law, corporations had no power to consolidate. They could however surrender their charters and acquire a new one. Under modern incorporation acts such power to consolidate is sometimes granted, subject to certain conditions. Two religious corporations cannot therefore consolidate without such authority or without at least an attempt to comply with the law on this subject.[110] Nor can such consolidation be effected unless the corporations are of a similar nature, with purposes and machinery which are not essentially different.[111] Thus a religious corporation and a corporation for missionary[112] or other charitable purposes[113] cannot enter into such an agreement. "The organic differences between the corporation of a church under denominational control and a charitable society organized under the free church act, are so striking that the property of the latter should not be allowed to be diverted from the uses to which it was intended to be devoted by its donors, to the support of an organization so essentially distinct and different."[114]

It quite frequently happens that corporations, which have reached

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[106] Harriman v. The First Bryan Baptist Church, 63 Ga. 186, 195, 35 Am. Rep. 117.

[107] Whitestown v. Stone, 7 Johns. 112.

[108] Methodist Episcopal Society v. Lake, 51 Vt. 353.

[109] Mussey v. Bulfinch Street Society, 55 Mass. 148.

[110] Chevra Bnai Israel Aushe Yanove v. Chevra Bikur Cholim, 52 N. Y. Supp. 712, 24 Misc. Rep. 189; Davis v. Congregation Beth Tephila Israel, 57 N. Y. Supp. 1015, 40 App. Div. 424; Chevra Medrash Auschei Makaver v. Makower Chevra Auchei Poland, 66 N. Y. Supp. 355, 100 St. Rep. 355; Erste Sokolower Congregation Anshe Yosher v. First United Royatiner Sokolower Verein, 66 N. Y. Supp. 356, 32 Misc. 269.

[111] Selkir v. Klein, 100 N. Y. Supp. 449, 50 Misc. Rep. 194.

[112] Stokes v. Phelps Mission, 47 Hun. 570, 14 N. Y. St. Rep. 901; Selkir v. Klein, 100 N. Y. Supp. 449, 50 Misc. Rep. 194.

[113] Chevra Bnai Israel v. Chevra Bikur Cholim, 52 N. Y. S. 712, 24 Misc. Rep. 189.

[114] Stokes v. Phelps Mission, 47 Hun. 570, 14 N. Y. St. Rep. 901.

the point at which the advisability of consolidation is agitated, have interlocking directorates. It is quite evident that under such circumstances one or both corporations will be deprived of the unbiased counsel of certain of their officers. Under such circumstances a transfer of land from one corporation to another, as a gratuity, will be deemed to be fraudulent by the courts.[115] A consolidation agreement will not receive any more favor. Where, therefore, a majority of the trustees on the boards of both corporations are identical, no legally binding contract for a consolidation of the two corporations can come into existence.[116]

Where however the statutory provisions have been followed and the two corporations have dealt with each other at arms' length, without fraud or suspicious circumstances, a valid agreement for a consolidation may come into existence, which will be recognized by the courts.[117] Such an agreement may exist even between two religious societies, which are merely quasi corporations.[118] When carried out so as to create a new corporation the old corporations will be absolutely wiped out, so that a devise or bequest to either will not inure to the new corporation, but will fall to the ground.[119]

Since the property of a church corporation is generally quite limited and since the proper care and improvement of its property and the engagement of clergymen, sextons and the like, constitutes its sole business, its relations to the outside world are of a much more limited character than are those of other corporations. "Every corporation must act according to its nature: a trading corporation must trade, a manufacturing corporation must manufacture, a banking corporation must bank, a transportation company must carry, and a religious corporation must preach, teach, minister to spiritual edification, and promote works of mercy and benevolence. A church incorporated as such cannot engage, even for a day, in merchandising, or in spinning or weaving, or in banking or broking, or in transporting freight or passengers. It must derive its income, not from the conduct of any worldly business, but from such property as it may happen to own, and from voluntary contributions. However urgent its needs for money, it cannot rent a farm to make a crop of corn or cotton, nor a store to buy and sell goods, nor a livery stable to let out horses and carriages, nor can it hire a vessel to

[115] St. James Church v. Church of the Redeemer, 45 Barb. 356.

[116] Stokes v. Phelps Mission, 47 Hun. 570, 14 N. Y. St. Rep. 901; In re Court Street M. E. Society of Rome, 51 Hun. 104, 4 N. Y. Supp. 723.

[117] Jones v. Sacramento Avenue Church, 198 Ill. 626, 64 N. E. 1018.

[118] Brown v. Lutheran Church, 23 Pa. 495.

[119] Gladding v. St. Mathew's Church, 25 R. I. 628, 57 Atl. 860, 65 L. R. A. 225.

transport the public upon rivers or the ocean."[120] It has therefore been held that a religious corporation cannot erect a business block,[121] or establish a bank,[122] or carry on a fair,[123] or buy real estate for speculation,[124] or slaves with the purpose of emancipating them,[125] or construct streets and manufacture brick,[126] or operate a garage, sell gasoline and adopt a trade name,[127] or become a common carrier of passengers.[128] It may, however, take a conditional estate,[129] insure its property,[130] build more than one house of worship,[131] erect a church as a memorial to a departed member,[132] eject any nonmember from its buildings,[133] devote its general funds to the purpose of other churches,[134] and establish schools in heathen lands, in which, among other things, secular subjects are taught.[135] Where difficulties arise it may submit them to arbitration,[136] engage attorneys,[137] and compromise and settle the controversy.[138] In carrying on its work, it may bind itself, without the use of a corporate seal,[139] become liable

[120] Harriman v. The First Bryan Baptist Church, 63 Ga. 186, 195, 36 Am. Rep. 117.

[121] First M. E. Church of Chicago v. Dixon, 178 Ill. 260, 52 N. E. 887, reversing 77 Ill. App. 166.

[122] Huber v. German Congregation, 16 Oh. St. 371.

[123] Constant v. St. Albans Church, 4 Daly 305.

[124] Thompson v. West, 59 Neb. 677, 82 N. W. 13, 49 L. R. A. 337.

[125] White v. White, 18 N. C. 260; Trustees of Quaker Society v. Dickenson, 12 N. C. 189. Says the court in the latter case on page 202: "If a sense of religious obligation dictates to any society the exercise of an enlarged benevolence, which, however, virtuous and just in the abstract, the policy of the law, founded on the duty of selfpreservation, has forbidden, it irresistibly follows that a transfer of property so directed must be void."

[126] Roman Catholic German Church v. Weighaus, 16 Ky. Law. Rep. 446.

[127] Pocono Pines Assembly v. Miller, 229 Pa. 33, 77 Atl. 1094.

[128] Harriman v. First Bryan Baptist Church, 63 Ga. 186, 36 Am. Rep. 117. Where the society is communistic, however, a wider range is of necessity afforded to it, and it may among other things deal in cabbage-seed and will be responsible for a breach of warranty committed in connection with such dealing. White v. Miller, 71 N. Y. 118, 27 Am. Rep. 13, reversing 7 Hun. 427.

[129] Starr v. Starr Methodist Protestant Church, 112 Md. 171, 76 Atl. 595.

[130] First Baptist Church v. Brooklyn Fire Insurance Co., 19 N. Y. 305.

[131] Brendle v. German Reformed Congregation, 33 Pa. St. 414; Wagner v. Episcopal Church, 9 Rich. Eq. 155.

[132] Cushman v. Church of Good Shepherd, 162 Pa. 280, 29 Atl. 872, s. c. 188 Pa. 438, 41 Atl. 616; Cumming v. Reid Memorial Church Trustees, 64 Ga. 105.

[133] Attorney General v. Federal Street Meeting House, 69 Mass. 1.

[134] Enos v. Harkins, 187 Mass. 40, 72 N. E. 253; Wiswell v. First Congregational Church, 14 Oh. St. 31, 47.

[135] Boardman v. Hitchcock, 120 N. Y. Supp. 1039; see Eaton v. Woman's Home Missionary Society, 264 Ill. 88.

[136] Morville v. American Tract Society, 123 Mass. 129.

[137] Harbison v. First Presbyterian Society, 46 Conn. 529, 33 Am. Rep. 34; Whiton v. Albany City Insurance Co., 109 Mass. 24; Child v. Christian Society, 144 Mass. 473, 11 N. E. 664; Cicotte v. St. Ann's Church, 60 Mich. 552, 27 N. W. 682.

[138] Horton's Executor v. Baptist Church in Chester, 34 Vt. 309, Johnson v. Osment, 108 Tenn. 32, 65 S. W. 23.

[139] Second Precinct in Reboboth v. Catholic Congregation, 40 Mass. 139; Antipoeda Baptist Church v. Mulford, 8 N. J. L. 182; Garvey v. Colcock, 1 Nott & McC. (S. C.) 231.

on an implied or quasi contract,[140] exercise such incidental functions, not expressly enumerated in its charter, which relate to the accomplishment of the substantial purposes of its incorporation,[141] and become indebted to accomplish such purposes.[142]

In construing a particular provision in a charter, this provision should not be treated as separate and apart from the balance of the instrument. "All the clauses are to be considered together and in association with one another in determining what the society may do. Its powers are not to be limited by reading each sentence by itself and carefully excluding every act not expressly included in some one sentence, but are defined by reading the statement of its powers as a connected whole."[143]

To sum up: The charter of a religious corporation constitutes its supreme law, to which everything else is subordinate. It is not intended, however, to be the only law by which the affairs of the corporation are governed. In the absence of an express prohibition in the charter, a religious corporation will therefore possess the power to make and enforce bylaws, which are reasonable and consistent with the charter.

The powers of the corporation as to property are circumscribed in various ways. Its power to acquire real property is in many states limited by mortmain statutes, whose test is usually the quantum rather than the value or adaptability of the property. Its power to sell or mortgage its real property is absolute, except in the State of New York, where a statute requires the assent of a court to such a transaction.

The contract powers of the corporation are also limited. While it may contract with its members for contributions which may even take the form of stock subscriptions, and while it may, following the method outlined by the statute, agree to consolidate with corporations of a similar nature, it cannot enter into any business relations with the outside world, except such as are immediately necessary for the proper management of its own concerns.

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[140] Gortemiller v. Rosengarn, 103 Ind. 414, 2 N. E. 829; Morville v. American Tract Society, 123 Mass. 129, 137; Storrs v. Congregational Church of Wilmington, 17 Weekly Dig. 179; Dunn v. Rector of St. Andrew's Church, 14 Johns. 118; Wilson v. Tabernacle Baptist Church, 59 N. Y. Supp. 148, 28 Misc. Rep. 268; Tull v. Trustees of M. E. Church, 75 N. C. 424; Cushman v. Church of Good Shepherd, 162 Pa. 280, 29 Atl. 872.

[141] Sherman v. American Congregational Association, 113 Fed. 609, 613.

[142] First Baptist Church v. Caughey, 85 Pa. 271; Cornelius v. Tully, 2 Ky. Law Rep. 204; Cattron v. First Universalist Society, 46 Iowa 106. A quasi corporation however has no such power, Bailey v. Trustees M. E. Church, 71 Me. 472; Jefts v. York, 64 Mass. 392.

[143] Eaton v. Woman's Home Missionary Society, 264 Ill. 88, 92.